

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

DEREK PHOENIX,

Petitioner,

Case No. 07-cr-20344

v.

Honorable Thomas L. Ludington
Magistrate Judge Patricia T. Morris

UNITED STATES OF AMERICA,

Respondent.

**ORDER REINSTATING PETITIONER'S MOTION TO VACATE SENTENCE AND
HOLDING IN ABEYANCE AND STAYING PETITION**

On September 14, 2015, Petitioner Derek Phoenix filed a motion to vacate his sentence under 28 U.S.C. § 2255. *See* ECF No. 39. He argues that pursuant to the Supreme Court's decision in *Johnson v. United States*, 135 S. Ct. 2551 (2015) (striking down the residual clause of the Armed Career Criminal Act as unconstitutionally vague), his sentence under the residual clause of the career offender provision of the United States Sentencing Guidelines must be vacated. Because Phoenix's petition was second or successive within the meaning of 28 U.S.C. § 2255(h), it was transferred to the Sixth Circuit. *See* ECF No. 53.

On January 19, 2017 the Sixth circuit issued an order authorizing Petitioner to proceed with his second or successive motion. *See* ECF No. 54. The Sixth Circuit further instructed this Court to hold Petitioner's case in abeyance pending the outcome of *Beckles v. United States*, 136 S.Ct. 2510 (2016), but also noted that this Court was free "to consider terminating the stay under appropriate circumstances, either on motion or sua sponte." *Id.* Pursuant to the Sixth Circuit's order:

It is **ORDERED** that Petitioner Phoenix's motion to vacate sentence under 28 U.S.C. § 2255, ECF No. 39, is **REINSTATED**.

It is further **ORDERED** that the petition is **HELD IN ABEYANCE** pending the outcome of *Beckles v. United States*, 136 S.Ct. 2510 (2016), and **STAYED**.

Dated: January 20, 2017

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on January 20, 2017.

s/Michael A. Sian
MICHAEL A. SIAN, Case Manager